Chapter 18

WATER AND OTHER NATURAL RESOURCES

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ARTICLE I. IN GENERAL

Sec. 18-1. Conversion of wells from agricultural to domestic use.

(a) *Policy.* It is the policy of the Community that wells drilled within the Community for agricultural irrigation or for any other nondomestic purposes will be constructed in such a manner as to allow for conversion to domestic purposes with minimum reconstruction costs so as to ensure the members of the Community an uninterrupted supply of domestic water.

(b) *Restrictions on issuance of permits.* The building official shall not issue a building and construction permit pursuant to section 10.100 of the zoning code for the drilling or construction of a well to supply water for agricultural irrigation or for any other nondomestic use unless the plans and specifications indicate and the permit requires that the well be constructed in such a way that it can be readily converted to use supplying domestic water. Such wells shall have such protections against contamination as are required in wells constructed for domestic water supply.
(Code 1981, § 18-1; Code 2012, § 18-1; Ord. No. SRO-96-85, §§ 1, 2, 1-23-1985; Ord. No. SRO-402-2012, § 18-1, 5-30-2012)

Secs. 18-2—18-20. Reserved.

ARTICLE II. GROUNDWATER MANAGEMENT

Sec. 18-21. Short title.

This article may be referred to as the "Groundwater Management Code."
(Code 1981, § 18-21; Code 2012, § 18-21; Ord. No. SRO-94-85, § 1, 12-23-1985; Ord. No. SRO-402-2012, § 18-21, 5-30-2012)

Sec. 18-22. Policy.

The groundwaters of the Community are in one groundwater basin underlying the Community. The owners of the land have a right to the reasonable and beneficial use of such waters to the extent that such use does not defeat the right of other landowners to reasonable and beneficial use of such waters. It is the policy of the Community that use of such groundwater should be subject to an equitable system of control, distribution, allocation and regulation so as to achieve the maximum beneficial use and conservation of such waters in recognition of the drain on the water resource and the changing state of the art of the use of water and the ability to determine the usable extent of the resource. It is the goal of the Community that groundwater use will be limited to replenishable supplies.
(Code 1981, § 18-22; Code 2012, § 18-22; Ord. No. SRO-94-85, § 2, 1-23-1985; Ord. No. SRO-402-2012, § 18-22, 5-30-2012)

Sec. 18-23. Scope of regulation.

This article shall regulate all groundwater within the Community.
(Code 1981, § 18-23; Code 2012, § 18-23; Ord. No. SRO-94-85, § 4, 1-23-1985; Ord. No. SRO-402-2012, § 18-23, 5-30-2012)

Sec. 18-24. Violation and penalty.

Any permittee who violates the conditions of the permit or the provisions of this article shall be subject to the forfeiture of the permit after notice and hearing as provided for in section 18-27. The Community shall have the jurisdiction to provide injunctive relief in order to prevent the use of groundwater in violation of this article upon a petition of the groundwater administrator. The Community court shall have the jurisdiction over civil actions brought by the groundwater administrator against permittees for civil damages resulting from the violation of the permit issued, or for using groundwater without a permit and such damages shall include the value of the water used in violation of this article, the cost of investigations and attorneys' fees and all hearing and court costs incurred.
(Code 1981, § 18-24; Code 2012, § 18-24; Ord. No. SRO-94-85, § 10, 1-23-1985; Ord. No. SRO-402-2012, § 18-24, 5-30-2012)

Sec. 18-25. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Groundwater means all water which is taken by well and pump or any like method from underground water sources except when such water is so taken by the Community for domestic water purposes of the members and Indian residents of the Community.

Groundwater administrator shall be the Community director of the Community development department or the director's designee or designees.

Reserved water rights means those rights to the use of waters recognized as reserved in accordance with the principles enunciated in *Winters* v. *United States,* 207 U.S. 564 (1908), *Cappaert* v. *United States,* 426 U.S. 128 (1976), and subsequent cases, which rights have either an immemorial priority or a priority date as of the establishment of the reservation.
(Code 1981, § 18-25; Code 2012, § 18-25; Ord. No. SRO-94-85, § 3, 1-23-1985; Ord. No. SRO-402-2012, § 18-25, 5-30-2012)

Sec. 18-26. Permits; standards of issuance and use.

(a) *Required.* No groundwater may be used for any purpose unless the user has received a groundwater use permit from the groundwater administrator.

(b) *Establishment of presumptive right.*

(1) Within 60 days of the enactment of this article, the groundwater administrator shall send by certified mail notice of the enactment of the ordinance from which this article is derived, together with a copy of this article to each user of groundwater within the Community. Mailing of such notice shall be conclusive proof of receipt of notice.

(2) Any person using groundwater at the time of the enactment of the ordinance from which this article is derived shall have a presumptive right to the use of such groundwater, in the amount used, for the term of any contract or other instrument which forms the basis of the groundwater use, or if there is no such contract or interest, for a period of five years. Such user shall apply for a groundwater use permit within 180 days of the enactment of the ordinance from which this article is derived. Failure to apply within such time shall result in the user's loss of any presumptive right. The presumptive right created by this section may be defeated by a fair showing that:

a. The amount of water used for the purpose exceeds the amount of water required to achieve the purpose intended; or

b. The purpose for which the water is used is wasteful of the resource in terms of other feasible uses.

If a finding under subsection (b)(2)a of this section is made, a groundwater use permit shall be issued for such an amount of groundwater as is reasonable and necessary for the use, provided the applicant submits to the groundwater administrator an amended application in the amount found to be reasonable and necessary for the use. If the use has been found to be wasteful under subsection (b)(2)b of this section, a permit may be issued only if the applicant submits to the groundwater administrator an amended application for an amount of water reasonable and necessary for a feasible alternative use. An amended application under subsection (b)(2)b of this section shall be treated as an application under subsection (c) of this section.

(c) *Permits for new use.*

(1) *Application.* Any member of the Community or any other person who holds a contractual right which requires the use of water for its enjoyment or any allotted landowner of the land for which a groundwater permit is being sought may apply for a groundwater use permit. The appli-

cation shall be on a form provided by the Community and shall provide information sufficient to enable the groundwater administrator to make a decision in regard to the issuance of a permit and to enable the groundwater administrator to impose reasonable use criteria on any issued permit.

(2) *Groundwater use permit.*

a. A groundwater use permit may be issued for a period of five years if the use to which the water is to be put is agricultural and the land on which the water is to be used is not subject of a contract or other instrument.

b. If the water is to be used for agricultural purposes and the land is subject of a contract or other instrument, then the permit may be issued for a period equal to that of the term of the contract or other instrument.

c. If the use to which the water is to be put is other than agricultural, the term of any groundwater use permit shall be coexistent with the term for which the use shall be reasonably required by the applicant, but in no event longer than the term of any contract or other instrument under which the use arises.

(3) *Determination of permitted water.* The amount of water permitted to be used under each groundwater use permit shall be determined by the need proven, and the available groundwater resources for all potential uses within the Community lands subject of this article.

(d) *Use permits conditional.* All groundwater use permits shall be issued conditioned on a term of use; the nature of the use permitted; and the amount of water to be used per week, month or year, depending on the nature of use; the parcel or tract of land within which the use will take place; and upon such other reasonable conditions as the groundwater administrator shall determine is necessary to carry out the policies of this article.

(e) *Actual and potential use permits.* Groundwater use permits may be issued for actual and potential uses. Groundwater use permits issued for potential uses shall be limited in time so that water resources will not be reserved beyond a reasonable period of time. For good and sufficient cause shown, extension in time may be granted.

(f) *Permits conditioned on available water.* All groundwater use permits shall be conditioned on the right of the groundwater administrator to change the amount or permitted use of groundwater depending on changing quantities of available groundwater. Any such change by the groundwater administrator shall be based upon clear and convincing evidence that the change is required to ensure the future availability of the resource, and shall be subject to the notice, hearing and appellate procedures of this article.
(Code 1981, § 18-26; Code 2012, § 18-26; Ord. No. SRO-94-85, § 5, 1-23-1985; Ord. No. SRO-402-2012, § 18-26, 5-30-2012)

Sec. 18-27. Application procedure.

(a) Any application for a groundwater use permit pursuant to section 18-26(b) or (c) shall be made to the groundwater administrator with an application fee as provided by the rules and regulations. The groundwater administrator shall determine whether and under what conditions a groundwater use permit shall be issued after a hearing has been held. The hearing shall be noticed by certified mail or delivered notice to all landowners owning land which is within the Community and within one mile of the perimeter of the land within which the water use is to be made, and all of the land within which the water use is to be made, and all persons having a right to use land which is within the Community and within one mile of the perimeter of the land within which the water use is to be made pursuant to a valid contract or other instrument, and by notice in the Community newspaper. Notice shall be given no less than ten days prior to such hearing. Mailing of notice shall be conclusive proof of receipt of notice. The hearing shall be conducted by the groundwater administrator in an informal manner with rules adopted pursuant to this article calculated to ensure full disclosure of all relevant information. Professional attorneys

shall not be permitted to represent parties at any such hearing. The groundwater administrator shall hear all relevant issues and within five days after the hearing is concluded, shall issue a written decision. The decision will contain the findings of act relied on by the groundwater administrator for the decision as well as the decision. The findings of fact and decision shall be distributed to the applicant and any other land user or Community member who files a notice of appearance pursuant to subsection (b) of this section.

(b) A decision of the groundwater administrator may be appealed to the Community court by the applicant, any Community member or other person having the right to the use of land within the Community, who files a notice of appearance with the groundwater administrator before the hearing is adjourned.

(c) Appeals shall be taken from any decision of the groundwater administrator in the following manner:

(1) *Notice of appeal.* Written notice of appeal shall be given within five days after the day the written and executed decision is filed with the secretary of the Community. The notice of appeal shall state all the grounds for appeal relied on by the appellant. The notice of appeal shall not be amended once it is filed. The appellee may file a short written response to the grounds for appeal within ten days after the notice of appeal is filed. The notice of appeal and response shall be mailed to the opposing party on the day it is filed. If the appellant is the applicant for the groundwater use permit, the appellee shall in all cases be the groundwater administrator. If the appellant is a person who filed a notice of appearance, the appellee shall in all cases be the applicant. The applicant for the groundwater permit shall in all cases be permitted to appeal. No more than three persons who filed notice of appearance, in addition to the applicant for the permit, shall be permitted to appeal the decision of the groundwater administrator. The first three such notices of appeal shall conclude filings.

(2) *Costs.* There shall be posted with the clerk of the Community court a cash fee of $25.00 to cover costs of the court.

(3) *Grounds for appeal.* The court shall determine the appeal upon the findings of fact and decision entered in the case by the groundwater administrator.

(4) *Findings of fact.* The findings of fact shall be presumed to be without reversible error. The presumption may be overcome by a sworn written statement presented to the court at the time of the filing of the notice of appeal which establishes on the basis of the statement, any one or more of the following grounds:

a. A witness ready and willing to testify at the time of the hearing on behalf of the appellant was not allowed by the groundwater administrator to take the witness stand and testify, and such testimony would have materially altered the decision of the groundwater administrator.

b. The groundwater administrator refused to admit documentary or other physical evidence, and such evidence would have materially altered the decision of the groundwater administrator.

c. After the hearing the appellant discovered material evidence which, with reasonable diligence, could not have been discovered and produced at the hearing, and such evidence would have materially altered the decision of the groundwater administrator.

In the event the court finds the presumption is overcome pursuant to this subsection, the court shall remand the case back to the groundwater administrator for the limited purpose of hearing only the excluded or new evidence and any evidence presented in rebuttal to such evidence. The hearing will be held within ten days after the order of the court prior to its decision to give the court such parties and appellee. At the conclusion of such remand hearing, the groundwater adminis-

trator shall, within ten days of the hearing, make and enter such amended findings of fact and decision as the groundwater administrator deems necessary, or in the event the groundwater administrator determines that the evidence adduced at the remand hearing requires no amendment, the groundwater administrator will issue a decision reaffirming its prior findings of fact and decision. The findings of fact and decision will be transmitted to the court and such findings of fact and decision will not be subject to a separate appeal.

(5) *Decision.* The court shall determine whether the decision is supported by the finding of fact and the law. Any party to the case may request an opportunity to appear before the court prior to its decision to give the court such parties view of the case. The other party or parties shall be given adequate notice of the hearing and an opportunity to present such party or parties view of the case. Such views shall be presented orally by the parties and shall only deal with the ground relied on by the appellant as set out in the notice of appeal. The hearing shall be limited to one hour and the time will be equally divided between the appellant and the appellee. If the court finds that the decision is incorrect, it shall issue a new decision correctly stating the decision. Such decision shall be final and not subject to rehearing, review or appeal.

(Code 1981, § 18-27; Code 2012, § 18-27; Ord. No. SRO-94-85, § 6, 1-23-1985; Ord. No. SRO-402-2012, § 18-27, 5-30-2012)

Sec. 18-28. Records of application, permit and proceedings.

A complete record of all applications, actions taken thereon, and any permits issued shall be maintained by the Community and shall be open for public inspection at the office of the groundwater administrator.

(Code 1981, § 18-28; Code 2012, § 18-28; Ord. No. SRO-94-85, § 7, 1-23-1985; Ord. No. SRO-402-2012, § 18-28, 5-30-2012)

Sec. 18-29. Records of water usage.

Each permittee shall maintain a complete record of groundwater withdrawal and usage. The record shall be maintained contemporaneously with withdrawal and use and shall contain the amount of water withdrawn on a weekly basis; the use to which it was put; the location of the use; the amount and cost of electrical power in connection with the withdrawal; and such other information as shall reasonably be required by the groundwater administrator. A true and complete copy of such records certified by the permittee to be accurate shall be filed by the permittee with the groundwater administrator on the 15th day of each month for the prior month.

(Code 1981, § 18-29; Code 2012, § 18-29; Ord. No. SRO-94-85, § 8, 1-23-1985; Ord. No. SRO-402-2012, § 18-29, 5-30-2012)

Sec. 18-30. Rule-making authority.

The groundwater administrator shall prescribe, subject to the approval of the Community Council, rules and regulations, not in conflict with the ordinances of the Community, necessary to perform the groundwater administrator's functions under this article.

(Code 1981, § 18-30; Code 2012, § 18-30; Ord. No. SRO-94-85, § 9, 1-23-1985; Ord. No. SRO-402-2012, § 18-30, 5-30-2012)

Secs. 18-31—18-48. Reserved.

ARTICLE III. ENVIRONMENTAL PROTECTION

Sec. 18-49. Policy.

It is the policy of the Community that:

(1) The health and welfare of the Community and its members are enhanced by compliance with federal and Community environmental law;

(2) Consistent with the 1984 statement of policy by the United States Environmental Protection Agency entitled "EPA Policy for the Administration of Environmental Programs on Indian Reservations," the Community develop and fulfill its princi-

pal role as the appropriate nonfederal party for making decisions and carrying out program responsibilities affecting the reservation, its environment, and the health and welfare of the reservation populace;

(3) Reasonable and feasible means within existing Community resources be regularly taken both to ensure compliance with federal and Community environmental law and to limit the Community's liability in the event of environmental damage caused by commercial lessees of Community property;

(4) The Community shall have the responsibility and capability of regulating any environmentally harmful conduct by any commercial lessee who is a party to a contract, lease or other instrument with the Community.

(Code 1981, § 18-41; Code 2012, § 18-41; Ord. No. SRO-180-95, § 1, 10-12-1994; Ord. No. SRO-402-2012, § 18-41, 5-30-2012)

Sec. 18-50. Definitions.

In this article, unless the context otherwise requires, the following terms shall have the meanings herein ascribed to them:

Business means all activities or acts, personal or corporate, engaged in and caused to be engaged in with the object of gain, benefit or advantage, either direct or indirect, but not casual activities or sales.

Commercial lessee means any person who, by means of a contract, lease or other instrument subject to the provisions of section 17-5, engages in business within the exterior boundaries of the Community Reservation.

Community means the Salt River Pima-Maricopa Indian Community.

Director means the director of the Community development department of the Community.

Environmentally harmful substance means any pollutant, solid, liquid or gaseous, subject to regulation and so defined by federal environmental law.

Federal environmental law means that body of public laws, as amended, enacted by the United States Congress to protect the environment including, but not limited to:

(1) Toxic Substances Control Act of 1976, 90 Stat. 2003, codified as 15 USC 2601 to 2654;

(2) Federal Water Pollution Control Act of 1987, 101 Stat. 76, codified as 33 USC 1251 to 1387;

(3) Solid Waste Disposal Act of 1976, 90 Stat. 2795, codified as 42 USC 6901 to 6991i;

(4) Clean Air Act of 1970, as amended, 84 Stat. 1705, codified as 42 USC 7401 to 7642;

(5) National Environmental Policy Act of 1969, 83 Stat. 852, codified as 42 USC 4321 to 4370a;

(6) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 94 Stat. 2767, 3300, codified as 42 USC 9601 to 9675;

and the federal regulations promulgated by agencies and departments of the United States pursuant to such public laws, and as such statutes and regulations may be hereafter amended.

Person means any individual, partnership, association, corporation or any organized group of persons whether incorporated or not, including a person acting in a fiduciary or representative capacity, and further including any governmental agency.

(Code 1981, § 18-42; Code 2012, § 18-42; Ord. No. SRO-180-95, § 2, 10-12-1994; Ord. No. SRO-402-2012, § 18-42, 5-30-2012)

Sec. 18-51. Compliance required generally.

(a) *Handling of environmentally harmful substances.* No person or commercial lessee shall generate, handle, store, transport, apply, or dispose of any environmentally harmful substance as defined within the scope of federal or Community environmental law, within the Community, if such activity or the manner of its conduct under the circumstances would be prohibited by federal or Community environmental law.

(b) *Amendment to section 17-6.* The Community Council shall not approve any contract, lease or instrument pursuant to section 17-6 unless such contract, lease or other instrument shall provide:

(1) An agreement to comply fully with all applicable federal and Community environmental law; and

(2) An agreement to hold the Community and/or allotted landowners harmless for all environmental damage caused by lessee or, in the alternative, to indemnify or reimburse the Community and/or allotted landowners for economic losses sustained as a result of such damage.

(Code 1981, § 18-43; Code 2012, § 18-43; Ord. No. SRO-180-95, § 3, 10-12-1994; Ord. No. SRO-402-2012, § 18-43, 5-30-2012)

Sec. 18-52. Enforcement of article and regulations.

(a) *Director designated to enforce article.* The director of the Community development department or his or her designee shall enforce this article and the regulations adopted pursuant to it.

(b) *Functions.* The director shall enforce this article to protect the health, safety and welfare of all residents of the Community against adverse effect of the restricted, regulated or unlawful generation, storage, transportation, handling or application of environmentally harmful substances within the Community. The director is authorized and directed to utilize all reasonably available resources to monitor regularly commercial developments pursuant to this section, and by rules and regulations to adopt and impose such restrictions, requirements, controls and prohibitions upon generation, storage, transportation, handling or application of environmentally harmful substances within the Community as, considering all reasonably available and material data and information, appear technically and scientifically reasonable for the protection of the public health, safety and welfare.

(c) *Authority.* The authority of the director shall include the following procedures and undertakings, as may be necessary, reasonable or appropriate for the protection of public health, safety and welfare, and to prevent harm to the environment:

(1) To designate environmentally harmful substances and activities.

(2) To restrict, regulate or prohibit the generation, storage, transportation, handling and application of environmentally harmful substances within the Community.

(3) To enter in a lawful manner any commercially leased premises within the Community to observe or inspect any equipment, supplies, materials, storage and handling areas and facilities, disposal sites and devices which are used or intended for use in connection with any environmentally harmful substance or potentially environmentally harmful substance.

(4) To issue, promulgate and enforce regulations to implement this article, subject to the approval of the Community Council.

(5) To require violators of this section and others liable for disposal or spillage of environmentally harmful substances within the Community to remove and clean or bear the costs of removing and cleaning such substances within a time frame established by the director.

(6) To obtain advice and assistance of federal, state, county and municipal government agencies, and private agencies, and persons with technical expertise, in the adoption and implementation of a comprehensive environmental program; to coordinate activities and cooperate with such other governmental agencies having similar or related responsibilities within their respective jurisdictions; and to utilize the Community court to enforce the environmental program, the provisions of this article, and the regulations adopted pursuant to this article.

(7) To designate authorized representatives of the director and to delegate to them authority to act on behalf of the director in the conduct of inspections, observa-

tions, inquiries, and enforcement of this article, regulations adopted pursuant to it.

Until an alternate waste disposal system is available for use by a user or installer of a septic tank system, nothing in this article shall limit the use or installation of a septic tank system or subject any user or installer of any such a system to any penalty provided such a septic tank system is maintained in a reasonable manner.
(Code 1981, § 18-44; Code 2012, § 18-44; Ord. No. SRO-180-95, § 4, 10-12-1994; Ord. No. SRO-402-2012, § 18-44, 5-30-2012)

Sec. 18-53. Production, processing, distribution, sale, etc., prohibited.

No person may generate, produce, process, manufacture, distribute, sell or offer to sell or dispose of any hazardous, toxic, or environmentally harmful substance within the Community.
(Code 1981, § 18-45; Code 2012, § 18-45; Ord. No. SRO-180-95, § 5, 10-12-1994; Ord. No. SRO-402-2012, § 18-45, 5-30-2012)

Sec. 18-54. Wildlife and natural plants.

(a) Except as otherwise provided by chapter 12, article II and chapter 15, article III, it is unlawful for any person to take, acquire, receive, damage, destroy, transport, purchase or sell any naturally occurring fish or wildlife or plant within the exterior boundaries of the Community without first obtaining a permit.

(b) It is unlawful for any person to take, acquire, receive, damage, destroy, transport, purchase, or sell any endangered or threatened fish or wildlife or plant, or to impair the critical habitat thereof, in violation of any law, treaty, or regulation of the United States, including, but not limited to, the Endangered Species Act (16 USC 1531 et seq.), or in violation of the laws and regulations of the State of Arizona governing the protection of native plants.
(Code 1981, § 18-46; Code 2012, § 18-46; Ord. No. SRO-211-96, § 2, 12-6-1995; Ord. No. SRO-402-2012, § 18-46, 5-30-2012)

Sec. 18-55. License suspension or revocation.

Violation of the provisions of this article shall be cause for suspension or revocation of license under section 15-36.
(Code 1981, § 18-47; Code 2012, § 18-47; Ord. No. SRO-180-95, § 6, 10-12-1994; Ord. No. SRO-211-96, § 1, 12-6-1995; Ord. No. SRO-402-2012, § 18-47, 5-30-2012)

Sec. 18-56. Judicial proceedings; Community court.

(a) If at any time it appears to the director that any person or commercial lessee has violated or failed to comply with the provisions of this article or any of the regulations adopted pursuant to it or that such person is then so violating or failing to comply therewith, the director may institute proceedings in the Community court for any appropriate remedies, whether criminal or civil in nature, including injunctive relief, seizure and forfeiture, and the posting of bonds or sureties to ensure compliance.

(b) The Community court shall have jurisdiction to hear all actions brought by the director pursuant to subsection (a) of this section, and may impose:

(1) Civil fines and penalties for violation of this article or the regulations issued pursuant thereto, not to exceed $10,000.00 for each such violation and for each day of its continuance; and/or

(2) A sentence of imprisonment for violation of this article or the regulations issued pursuant thereto not to exceed six months in the Community jail or a $5,000.00 fine or both, with costs.

(Code 1981, § 18-48; Code 2012, § 18-48; Ord. No. SRO-180-95, § 7, 10-12-1994; Ord. No. SRO-211-96, § 1, 12-6-1995; Ord. No. SRO-402-2012, § 18-48, 5-30-2012)

Secs. 18-57—18-85. Reserved.

ARTICLE IV. SURFACE WATER MANAGEMENT

Sec. 18-86. Short title.

This article may be referred to as the "Surface Water Management Code."
(Code 1981, § 18-71; Code 2012, § 18-71; Ord. No. SRO-199-95, 5-3-1995; Ord. No. SRO-402-2012, § 18-71, 5-30-2012)

Sec. 18-87. Policy.

The rights of the Community to the waters of the Salt and Verde Rivers and the Central Arizona Project (surface water) have been quantified by the Salt River Pima-Maricopa Indian Community Water Rights Settlement Agreement of 1988 and the Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988 (Act). These rights constitute an invaluable asset of the Community which ought to be wisely managed for the benefit of the members of the Community and landowners within the Community. It is the policy of the Community that use of such surface water should be subject to an equitable system of control, distribution, allocation and regulation so as to achieve the maximum beneficial use and conservation of such waters in recognition of the drain on the water resource and the changing state of the art of the use of water and the varying annual quantity of available Community water. Surface water shall first be used to satisfy the agricultural requirements of the Community's lands, and then be used for appropriate commercial purposes. Groundwater shall be used for domestic and commercial purposes which require no water treatment beyond fluoridation.
(Code 1981, § 18-72; Code 2012, § 18-72; Ord. No. SRO-199-95, 5-3-1995; Ord. No. SRO-402-2012, § 18-72, 5-30-2012)

Sec. 18-88. Scope of regulation.

This article shall regulate all surface water of the Community.
(Code 1981, § 18-73; Code 2012, § 18-73; Ord. No. SRO-199-95, 5-3-1995; Ord. No. SRO-402-2012, § 18-73, 5-30-2012)

Sec. 18-89. Definitions.

The following terms, when used in this article, shall have the meanings ascribed herein, except where context clearly indicates a different meaning:

Regulated surface water means water diverted from any surface watercourse or surface water storage facility and carried to the Community for any other purpose.

Surface water administrator means the director of the Community development department or the director's designee or designees.

Unregulated surface water or effluent means water which, after having been withdrawn as groundwater or diverted as surface water, has been used for domestic, municipal, agricultural or industrial purposes and which is available for reuse for any purpose, whether or not the water has been treated to improve its quality.
(Code 1981, § 18-74; Code 2012, § 18-74; Ord. No. SRO-199-95, 5-3-1995; Ord. No. SRO-402-2012, § 18-74, 5-30-2012)

Sec. 18-90. Permits; standards of issuance and use.

(a) *Permit required.* No surface water may be used for any purpose unless the user has received a surface water use permit from the surface water administrator.

(b) *Establishment of presumptive right.*

(1) Within 60 days of the enactment of this article, the surface water administrator shall send, by certified mail, notice of the enactment of this article, together with a copy of this article to each user of surface water within the Community. Mailing of such notice shall be conclusive proof of receipt of notice.

(2) Any person using regulated surface water at the time of the enactment of the ordinance from which this article is derived shall have a presumptive right to the use of such surface water, in the amount used, for the term of any contract or other instrument which forms the basis of the surface water use, or, if there is no such

contract or interest, for a period of five years. Such user shall apply for a surface water use permit within 180 days of the enactment of the ordinance from which this article is derived. Failure to apply within such time shall result in the user's loss of any presumptive right. The presumptive right created by this section may be defeated by a fair showing that:

a. The amount of water used for the purpose exceeds the amount of water required to achieve the purpose intended; or

b. The purpose for which the water issued is wasteful of the resource in terms of other feasible uses.

If a finding under subsection (b)(2)a of this section is made, a surface water use permit shall be issued for such an amount of surface water as is reasonable and necessary for the use, provided the applicant submits to the surface water administrator an amended application in the amount found to be reasonable and necessary for the use. If the use has been found to be wasteful under subsection (b)(2)b of this section, a permit may be issued only if the applicant submits to the surface water administrator an amended application for an amount of water reasonable and necessary for a feasible alternative use. An amended application under subsection (b)(2)b of this section shall be treated as an application under subsection (c) of this section.

(3) Any allottee or other person upon whose property unregulated surface water occurs, whether naturally or whether by return or salvage, is presumed to have usage rights to such water. These persons are not required to obtain a permit for use of such water.

(c) *Permits for new use.*

(1) *Permit form.* Any member of the Community or any other person who holds a contractual right which requires the use of water for its enjoyment or any allotted landowner of the land for which a surface water permit is being sought may apply for a surface water use permit. The application shall be on a form provided by the Community and shall provide information sufficient to enable the surface water administrator to make a decision in regard to the issuance of a permit and to enable the surface water administrator to impose reasonable use criteria on any issued permit.

(2) *Term.*

a. A surface water use permit may be issued for a period of five years if the use to which the water is to be put is agricultural and the land on which the water is to be used is not subject to a contract or other instrument.

b. If the water is to be used for agricultural purposes and the land is subject to a contract or other instrument, then the permit may be issued for a period equal to that of the term of the contract or other instrument.

c. If the use to which the water is to be put is other than agricultural, the term of any surface water use permit shall be coexistent with the term for which the use shall be reasonably required by the applicant, but in no event longer than the term of any contract or other instrument under which the use arises.

(3) *Determination of amount of water.* The amount of regulated surface water permitted to be used under each surface water use permit shall be determined by both the need proven and the available supply of surface water.

a. *Use permits conditional.* All surface water use permits shall be issued conditioned on:

1. A term of use;

2. The nature of the use permitted;

3. The amount of water to be used per week, month or year, depending on the nature of use;

4. The parcel or tract of land within which the use will take place; and

5. Upon such other reasonable conditions as the surface water administrator shall determine are necessary to carry out the policies of this article.

b. *Actual and potential use permits.* Surface water use permits may be issued for actual and potential uses. Surface water use permits issued for potential uses shall be limited in time so that water resources will not be reserved beyond a reasonable period of time. For good and sufficient cause shown, extension in time may be granted.

c. *Permits conditioned on available water.* All surface water use permits shall be conditioned on the right of the surface water administrator to change the amount or permitted use of surface water depending on changing quantities of available regulated surface water. Any such change by the surface water administrator shall be based upon the administrator's written finding that the change is required to ensure the equitable distribution of the resource, and shall be subject to the notice, hearing and appellate procedures of this article.

d. *Redetermination of water requirements.* The surface water administrator may, upon notice and hearing, and subject to the appellate provisions of this article, determine that the use of water by a permittee in any year requires a redetermination of such permittee's water requirements and the surface water administrator may, upon a written finding, reduce the amount of water to be used in the remaining years of the permit to the amount actually required.

(d) *Renewal.* Permittees must apply for a renewal of a permit at least six months prior to its expiration. In the absence of clear and convincing evidence that a permit should not be renewed, it will be renewed. Renewal may be on different terms than contained in the prior permit and the applicant shall be required to meet the standards of this article for the issuance of a permit for a use with a presumptive right.
(Code 1981, § 18-75; Code 2012, § 18-75; Ord. No. SRO-199-95, 5-3-1995; Ord. No. SRO-402-2012, § 18-75, 5-30-2012)

Sec. 18-91. Shortage; retired agricultural lands.

(a) *Shortage.* When the surface water administrator determines that there will be insufficient surface supplies for a stated period of time, the surface water administrator shall determine in a written finding the facts leading to the conclusion, the conclusion of shortage and the determination of reallocation of surface water to permittees.

(1) The findings will be made only after a public hearing which has been noticed at least ten days prior to its conveying and at which testimony and written memoranda regarding the issue of water availability shall be received by the surface water administrator, who shall be the hearing officer, unless the surface water administrator designates another person to be the hearing officer.

(2) The allocation of surface water shall be accomplished by an equal reduction in water supplies delivered in the most efficient time pattern as determined by the surface water administrator whether or not any permittee is disadvantaged thereby.

(b) *Extended water shortage.* The surface water administrator shall impose a moratorium on the delivery of surface water to agricultural or other uses which have not had delivery of surface water to the time the moratorium commences if the surface water administrator makes written findings pursuant to the process provided in subsection (a)(1) of this section that a finding requir-

ing a reallocation under this section has been made for the period just ending and for the ensuing period.

(c) *Retirement of agricultural lands and other uses.* Permits for surface water delivery for agricultural or other purposes shall terminate when the use for which the permit was issued lapses. (Code 1981, § 18-76; Code 2012, § 18-76; Ord. No. SRO-199-95, 5-3-1995; Ord. No. SRO-402-2012, § 18-76, 5-30-2012)

Sec. 18-92. Application procedure.

(a) Any application for a surface water use permit pursuant to section 18-90 shall be made to the surface water administrator with an application fee as provided by the rules and regulations. The surface water administrator shall determine whether and under what conditions a surface water use permit shall be issued after a hearing has been held. The hearing shall be noticed by certified mail or delivered notice to all landowners owning land which is within the Community and within one mile of the perimeter of the land within which the water use is to be made, and all of the land within which the water use is to be made, and all persons having a right to use land which is within the Community and within one mile of the perimeter of the land within which the water use is to be made pursuant to a valid contract or other instrument, and by notice in the Community newspaper. Notice shall be given no less than ten days prior to such hearing. Mailing of notice shall be conclusive proof of receipt of notice. The hearing shall be conducted by the surface water administrator in an informal manner with rules adopted pursuant to this article calculated to ensure full disclosure of all relevant information. Professional attorneys shall not be permitted to represent parties at any such hearing. The surface water administrator shall hear all relevant issues and, within five days after the hearing is concluded, shall issue a written decision. The decision will contain the findings of fact relied on by the surface water administrator for the decision as well as the decision. The findings of fact and decision shall be distributed to the applicant and any other land user or Community member who files a notice of appearance pursuant to subsection (b) of this section.

(b) A decision of the surface water administrator may be appealed to the Community court by the applicant, any Community member, or other person having the right to the use of land within the Community, who files a notice of appearance with the surface water administrator before the hearing is adjourned.

(c) Appeals shall be taken from any decision of the surface water administrator in the following manner:

(1) *Notice of appeal.* Written notice of appeal shall be given within five days after the day the written and executed decision is filed with the secretary of the Community. The notice of appeal shall state all the grounds for appeal relied on by the appellant. The notice of appeal shall not be amended once it is filed. The appellee may file a short written response to the grounds for appeal within ten days after the notice of appeal is filed. The notice of appeal and response shall be mailed to the opposing party on the day it is filed. If the appellant is the applicant for the surface water use permit, the appellee shall, in all cases, be the surface water administrator. If the appellant is a person who filed a notice of appearance, the appellee shall, in all cases, be the applicant. The applicant for the surface water permit shall, in all cases, be permitted to appeal. No more than three persons who filed notice of appearance, in addition to the applicant for the permit, shall be permitted to appeal the decision of the surface water administrator. The first three such notices of appeal shall conclude filings.

(2) *Costs.* There shall be posted with the clerk of the Community court a cash fee of $25.00 to cover costs of the court.

(3) *Grounds for appeal.* The court shall determine the appeal upon the findings of fact and decision entered in the case by the surface water administrator.

(4) *Findings of fact.* The findings of fact shall be presumed to be without reversible error. The presumption may be overcome by a sworn written statement presented to

the court at the time of the filing of the notice of appeal which establishes, on the basis of the statement, any one or more of the following grounds:

a. That a witness ready and willing to testify at the time of the hearing on behalf of the appellant was not allowed by the surface water administrator to take the witness stand and testify, and such testimony would have materially altered the decision of the surface water administrator.

b. That the surface water administrator refused to admit documentary or other physical evidence, and such evidence would have materially altered the decision of the surface water administrator.

c. That after the hearing the appellant discovered material evidence which, with reasonable diligence, could not have been discovered and produced at the hearing, and such evidence would have materially altered the decision of the surface water administrator.

In the event the court finds the presumption is overcome pursuant to this subsection, the court shall remand the case back to the surface water administrator for the limited purpose of hearing only the excluded or new evidence and any evidence presented in rebuttal to such evidence. The hearing will be held within ten days after the order of the court prior to its decision to give the court such parties and appellee. At the conclusion of such remand hearing, the surface water administrator shall, within ten days of the hearing, make and enter such amended findings of fact and decision as the surface water administrator deems necessary, or, in the event the surface water administrator determines that the evidence adduced at the remand hearing requires no amendment, the surface water administrator will issue a decision reaffirming its prior findings of fact and decision. The findings of fact and decision will be transmitted to the court and such findings of fact and decision will not be subject to a separate appeal.

(5) *Decision.* The court shall determine whether the decision is supported by the finding of fact and the law. Any party to the case may request an opportunity to appear before the court prior to its decision to give the court such party's view of the case. The other party or parties shall be given adequate notice of the hearing and an opportunity to present such party's or parties' view of the case. Such views shall be presented orally by the parties and shall only deal with the ground relied on by the appellant as set out in the notice of appeal. The hearing shall be limited to one hour and the time will be equally divided between the appellant and the appellee. If the court finds that the decision is incorrect, it shall issue a new decision correctly stating the decision. Such decision shall be final and not subject to rehearing, review or appeal.

(Code 1981, § 18-77; Code 2012, § 18-77; Ord. No. SRO-199-95, 5-3-1995; Ord. No. SRO-402-2012, § 18-77, 5-30-2012)

Sec. 18-93. Records of applications and permit.

A complete record of all applications, actions taken thereon, and any permits issued shall be maintained by the Community and shall be open for public inspection at the office of the surface water administrator.

(Code 2012, § 18-78; Ord. No. SRO-199-95, 5-3-1995; Ord. No. SRO-402-2012, § 18-78, 5-30-2012)

Sec. 18-94. Records of water usage.

(a) Each permittee shall maintain a complete record of surface water usage. The record shall be maintained contemporaneously with use and shall contain:

(1) The amount of water used on a weekly basis;

(2) The use to which it was put;

(3) The location of the use; and

(4) Such other information as shall reasonably be required by the surface water administrator.

(b) A true and complete copy of such records certified by the permittee to be accurate shall be filed by the permittee with the surface water administrator on the 15th day of each month for the prior month. The surface water administrator shall monitor the accuracy of the records.
(Code 1981, § 18-79; Code 2012, § 18-79; Ord. No. SRO-199-95, 5-3-1995; Ord. No. SRO-402-2012, § 18-79, 5-30-2012)

Sec. 18-95. Violation; penalty.

Any permittee who violates the conditions of the permit or the provisions of this article shall be subject to the forfeiture of the permit after notice and hearing as provided for in section 18-92. The Community shall have the jurisdiction to provide injunctive relief in order to prevent the use of surface water in violation of this article upon a petition of the surface water administrator. The Community court shall have the jurisdiction over civil actions brought by the surface water administrator against permittees for civil damages resulting from the violation of the permit issued, or for using surface water without a permit, and such damages shall include the value of the water used in violation of this article, the cost of investigations and attorney's fees, and all hearing and court costs incurred.
(Code 1981, § 18-80; Code 2012, § 18-80; Ord. No. SRO-199-95, 5-3-1995; Ord. No. SRO-402-2012, § 18-80, 5-30-2012)

Sec. 18-96. Rule-making authority.

The surface water administrator shall prescribe, subject to the approval of the Community Council, rules and regulations, not in conflict with the ordinances of the Community, necessary to perform the surface water administrator's function under this article.
(Code 1981, § 18-81; Code 2012, § 18-81; Ord. No. SRO-199-95, 5-3-1995; Ord. No. SRO-402-2012, § 18-81, 5-30-2012)

Sec. 18-97. Effective date.

The provisions of this article shall become effective as of May 3, 1995.
(Code 1981, § 18-82; Code 2012, § 18-82; Ord. No. SRO-199-95, 5-3-1995; Ord. No. SRO-402-2012, § 18-82, 5-30-2012)

Secs. 18-98—18-122. Reserved.

ARTICLE V. GRUSP GROUNDWATER RECHARGE CONTROL AND QUALITY PROTECTION

Sec. 18-123. Declaration of policy.

It is the policy of the Community that the groundwater underlying Community lands be protected from contamination resulting from contact with Community landfills. In furtherance of that policy, a plan and appropriate regulations shall be established to help ensure separation between groundwater levels and low points of the landfill refuse cells. The purpose of this plan and its related regulations is to provide the Community a mechanism by which it may adjust groundwater levels in the event of an emergency involving the rapid rise of such levels. Furthermore, additional regulations designed to improve Community oversight of groundwater quality shall be authorized. This plan and its related regulations are in no way intended to alleviate or absolve the Salt River Project or any other interested parties from their respective duties and obligations in maintaining safe groundwater levels and preserving groundwater quality.
(Code 1981, § 18-83; Code 2012, § 18-83; Ord. No. SRO-326-08, 12-5-2007; Ord. No. SRO-402-2012, § 18-83, 5-30-2012)

Sec. 18-124. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Aquifer means the groundwater aquifer underlying the Community landfills and the GRUSP.

Community means the Salt River Pima-Maricopa Indian Community.

Community landfills means the Salt River Landfill located on the north side of the Bee Line Highway in Section 19, Township 2 North, Range 6 East, the Tri-Cities Landfill, a closed landfill located on the south side of the Bee Line Highway in Section 34, Township 2 North, Range 5 East along with Sections 3 and 4, Township 1 North, Range 5 East, Gila and Salt River Base and Meridian, and other landfills that may have been or may be established.

GRUSP means the Granite Reef Underground Storage Project located on approximately 350 acres of land in Sections 28, 29 and 30, Township 2 North, Range 6 East, leased to it by the Community, and any related Community lands or facilities, used for recharging water into the ground.

GRUSP permittees means the entities recognized and given a permit by the Arizona department of water resources to utilize the GRUSP for purposes of obtaining credits, consisting of the Salt River Project (as operating agent), the City of Chandler, the City of Phoenix, the City of Mesa, the City of Scottsdale, the City of Tempe, and the Town of Gilbert.

Maximum safe level means the highest level of groundwater underlying Community landfills that is permitted under regulations of the Community and under orders issued by a responsible Community official or agency under authority of this article.

Salt River Project means collectively, the Salt River Project Agricultural Improvement and Power District, an Arizona municipality, as the GRUSP lessee and as a GRUSP permittee, and the Salt River Valley Water Users Association, an Arizona corporation, as a GRUSP permittee.
(Code 1981, § 18-84; Code 2012, § 18-84; Ord. No. SRO-326-08, 12-5-2007; Ord. No. SRO-402-2012, § 18-84, 5-30-2012)

Sec. 18-125. Water quality regulation.

Primary authority to preserve the integrity of the Community's groundwater is in the Community development department (CDD). The CDD is authorized to monitor and regulate groundwater quality and perform necessary related functions. Such functions include developing appropriate regulations as required herein and providing appropriate oversight procedures to ensure Community and GRUSP permittee compliance with this article and relevant groundwater quality standards. These functions shall be performed by CDD subject to the supervision of the CDD director and of the Community manager or his or her designee. This responsibility is delegated by the Community Council, and such delegation may be reassigned by the council by resolution should the need arise.
(Code 1981, § 18-85; Code 2012, § 18-85; Ord. No. SRO-326-08, 12-5-2007; Ord. No. SRO-402-2012, § 18-85, 5-30-2012)

Sec. 18-126. Operational management and MSL regulation.

Primary authority for carrying out the Community's operational and management functions set forth in this article is in the engineering and construction services department (ECS). Such functions include performing the management and enforcement functions set forth below, as well monitoring groundwater levels and rates of flow and rise into and out of the GRUSP to ensure that the maximum safe level (MSL) is maintained. These functions shall be performed by ECS subject to the supervision of the ECS director and the Community manager, or their respective designee(s). This responsibility is delegated by the Community Council, and such delegation may be reassigned by the council by resolution should the need arise.
(Code 1981, § 18-86; Code 2012, § 18-86; Ord. No. SRO-326-08, 12-5-2007; Ord. No. SRO-402-2012, § 18-86, 5-30-2012)

Sec. 18-127. Formulation and adoption of regulations.

CDD, in conjunction with ECS, shall formulate regulations that prescribe the maximum safe level of groundwater underlying Community landfills, recognizing that the maximum safe level may vary from time-to-time depending upon the quantity of Salt River and Verde River waters being released from the facilities of the Salt River Project as determined by factors including but not limited to the water level of the associated reservoir, the extent of Salt River and Verde River

watersheds snow cover, and precipitation predictions. Such regulations shall require periodic reports from the Salt River Project on groundwater levels as determined from various means including but not limited to monitoring well depth-to-groundwater levels, water recharge quantities, groundwater withdrawals from the associated Aquifer through supply wells, and data described above which determines the release of river water from the Salt River Project facilities. Formulated regulations shall be furnished, together with an invitation to submit written comments, to other Community departments and agencies having an interest in the subject and to the Salt River Project. After reviewing the comments, CDD and ECS shall submit the proposed final regulations to the Community Council for its consideration and approval. CDD, in conjunction with ECS, may issue temporary regulations that shall be in effect during the comment and review process.
(Code 1981, § 18-87; Code 2012, § 18-87; Ord. No. SRO-326-08, 12-5-2007; Ord. No. SRO-402-2012, § 18-87, 5-30-2012)

Sec. 18-128. Enforcement authority.

ECS shall have the authority to enforce the maximum safe level of groundwater by issuing orders to the Salt River Project limiting and prohibiting groundwater recharge. This authority will be applicable not only if the maximum safe level has been exceeded, but also in instances where the maximum safe level has not been exceeded. The Community may enforce orders issued pursuant to this section by excluding the violators from the GRUSP or by other appropriate means.
(Code 1981, § 18-88; Code 2012, § 18-88; Ord. No. SRO-326-08, 12-5-2007; Ord. No. SRO-402-2012, § 18-88, 5-30-2012)

Sec. 18-129. Employment of consultants.

ECS, in consultation with CDD, shall have the authority to employ expert consultants as may be necessary to conduct the efficient performance of the duties assigned to it by this article.
(Code 1981, § 18-89; Code 2012, § 18-89; Ord. No. SRO-326-08, 12-5-2007; Ord. No. SRO-402-2012, § 18-89, 5-30-2012)

Sec. 18-130. GRUSP maintenance.

The CDD and ECS directors shall request through the Community's budgeting process the funds necessary for their departments to perform the regulatory and operational functions set forth in this article.
(Code 1981, § 18-90; Code 2012, § 18-90; Ord. No. SRO-326-08, 12-5-2007; Ord. No. SRO-402-2012, § 18-90, 5-30-2012)

Sec. 18-131. Additional regulations to ensure water integrity authorized.

CDD is authorized to develop additional regulations as needed to ensure the integrity of waters entering into and being stored in the GRUSP. Such additional regulations shall be effective when approved by the Community Council by resolution.
(Code 1981, § 18-91; Code 2012, § 18-91; Ord. No. SRO-326-08, 12-5-2007; Ord. No. SRO-402-2012, § 18-91, 5-30-2012)

Secs. 18-132—18-160. Reserved.

ARTICLE VI. AGRICULTURE FUGITIVE DUST CONTROL

Sec. 18-161. Title, authority, purpose, etc.

(a) *Title.* This article shall be known as the Community agriculture fugitive dust control ordinance.

(b) *Authority.* This article is enacted pursuant to article VII, section 1(c)(1), (c)(7) and (k) of the Community Constitution.

(c) *Purpose/policy.* The purpose of this article is to regulate and mitigate agricultural fugitive dust sources within the exterior boundaries of the Community by minimizing the amount of particulate matter (PM-10 and PM-2.5) emitted into the ambient air as a result of the impact of human related activities through regulatory measures aimed to prevent, reduce, or mitigate particulate matter emissions.

(d) *Scope.* This article shall regulate the release of all agricultural fugitive dust within the Community.

(e) *Regulatory authority.* The authority of the Community, the Community development department director, or as may be delegated by the director, shall include the promulgation, issuance, and enforcement of regulations, policies, procedures or rules, as may be necessary or appropriate for the implementation of this article.
(Code 2012, § 18-95; Ord. No. SRO-368-2010, § 18-85, 8-18-2010; Ord. No. SRO-402-2012, § 18-95, 5-30-2012)

Sec. 18-162. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Access restriction means restricting or eliminating public access to noncropland with signs or physical obstruction.

Aggregate cover means gravel, concrete, recycled road base, caliche or other similar material applied obstruction.

Artificial wind barrier means a physical barrier to the wind.

Caliche means a hardened deposit of calcium carbonate.

Carryout/trackout means any and all bulk materials that adhere to and agglomerate on the exterior surfaces of motor vehicles, haul trucks and/or equipment (including tires) and that have fallen onto a paved public roadway.

Cessation of night tilling means the discontinuance of night tilling on high pollution advisory days during stagnant air conditions.

Chemical irrigations means applying fertilizer, pesticide or other agricultural chemicals to cropland through an irrigation system.

Combining tractor operations means performing two or more tillage, cultivation, planting or harvesting operations with a single tractor or harvester pass.

Community means the Salt River Pima-Maricopa Indian Community (SRPMIC).

Community manager means the Community manager or his or her authorized representative.

Cover crop means plants or a green manure crop grown for seasonal soil protection or soil improvement.

Critical area planting means using trees, shrubs, vines, grasses or other vegetative cover on noncropland.

Cropland means land that is suited to or used for crops.

Cross wind ridges means soil ridges formed by a tillage operation.

Cross wind strip cropping means planting strips of alternating crops within the same field.

Cross wind vegetative strips means herbaceous cover established in one or more strips within the same field.

Dust suppressants are those materials applied to a soil surface to prevent soil particles from becoming airborne. Examples include fiber based, calcium chloride, magnesium chloride, lignosulfonate, petroleum resin, and acrylic polymers, nonpetroleum based organics and ligninsulfonate.

Environmental protection and natural resources means the Community's environmental protection and natural resources office (EPNR). The person authorized to act on behalf of the EPNR is the Community's EPNR manager or his or her authorized representative.

Equipment modification means modifying agricultural equipment to prevent or reduce fugitive dust from cropland.

Fugitive dust means particulate matter emissions made airborne by forces of wind, mechanical disturbances of surfaces or both. Unpaved roads, construction sites and tilled land are examples of sources of fugitive dust.

Green chop means harvesting of a forage crop without allowing it to dry in the field.

Integrated pest management means the use of a combination of techniques including organic, conventional and biological practices.

Limited activity during a high-wind event means performing no tillage or soil preparation activity when the measured winds peek at six feet height is more than 25 miles per hour at the farm site.

Manure application means applying animal waste or biosolids to a soil surface.

Mulching means applying plant residue or other material that is not produced on site to a soil surface.

Multiyear crop means a crop, pasture, or orchard that is grown, or will be grown, on a continuous basis for more than a year.

Noncropland means any land that does not meet the definition of cropland including unpaved roads and buffer strips.

Owner and/or o*perator* means any person who owns, leases, operates, controls, or supervises a fugitive dust source subject to the requirements of this article.

Permanent cover means a perennial vegetative cover on cropland.

Planting based on soil moisture means applying water to soil before performing planting operations.

Precision farming means using global positioning system (GPS) to precisely guide farm equipment in the field.

Reduced harvest activity means reducing the number of harvest passes using a mechanized method to cut and remove crops from a field.

Reduced tillage system means reducing the number of tillage operations used to produce a crop.

Reduced vehicle speed means operating farm vehicles or farm equipment on unpaved farm roads at speeds not to exceed 15 miles per hour.

Residue management means managing the amount and distribution of crop and other plant residues on a soil surface.

Sequential cropping means growing crops in a sequence that minimizes the amount of the time bare soil is exposed on a field.

Surface roughening means manipulating a soil surface to produce or maintain clods.

Tillage and *harvest* means arable land that is worked by plowing and sowing, raising crops and the yield from plants in a single growing season.

Tillage based on soil moisture means applying water to soil before or during tillage, or delaying tillage to coincide with precipitation.

Timing of tillage operation means performing tillage operations at a time that will minimize the soil's susceptibility to generate fugitive dust emissions.

Transgenic crops means the use of plants that are genetically modified.

Tree, shrub or windbreak planting means providing a woody vegetative barrier to the wind.

Watering means applying water to noncropland. (Code 2012, § 18-96; Ord. No. SRO-368-2010, § 18-86, 8-18-2010; Ord. No. SRO-402-2012, § 18-96, 5-30-2012)

Sec. 18-163. Applicability.

(a) *Purpose.* This article limits particulate matter (PM-10 and PM-2.5) emissions into the ambient air from any agriculture property, operation, activity or land use that may serve as an agricultural fugitive dust source.

(b) *Dust control measures and requirements.* The owner and/or operator who farms more than five contiguous acres of land within the Community must complete an agricultural fugitive dust general plan for each location and shall employ two of the following dust control measures for each category of agricultural activity at each location (if applicable). All general plans shall identify, at minimum, the contact information for the owner and/or operator, the location, the dust control sources and the measures to be taken before, after, and while conducting any dust generating activity; and must be submitted to the EPNR within 30 days of being requested by the EPNR to do so. The EPNR shall approve, disap-

prove, or conditionally approve the general plan, in accordance with the requirements herein within five days of receipt of the general plan.

(1) *Tillage and harvest.*

a. Cessation of night tilling.

b. Chemical irrigation.

c. Combining tractor operations.

d. Equipment modification.

e. Green chop.

f. Integrated pest management.

g. Limited activity during high-wind events.

h. Multiyear crop.

i. Planting based on soil moisture.

j. Precision farming.

k. Reduced harvest activity.

l. Reduced tillage system.

m. Tillage based on soil moisture.

n. Timing of tillage operations.

o. Transgenic crops.

(2) *Noncropland.*

a. Access restriction.

b. Aggregate cover.

c. Artificial wind barrier.

d. Critical area planting.

e. Manure application.

f. Reduce vehicle speed.

g. Dust suppressants approved by environmental protection and natural resources division.

h. Trackout control system.

i. Tree/shrub/windbreak planting.

j. Watering.

(3) *Cropland.*

a. Artificial wind barrier.

b. Cover crop.

c. Crosswind ridges.

d. Crosswind strip cropping.

e. Crosswind wind vegetative strip.

f. Integrated pest management.

g. Manure application.

h. Mulching.

i. Multiyear crop.

j. Permanent cover.

k. Planting based on soil moisture.

l. Residue management.

m. Sequential cropping.

n. Surface roughening.

o. Transgenic crops.

p. Trees/shrub/windbreak planting.

(c) *Additional control measures.* Should any single control measure prove ineffective, the owner and/or operator shall immediately implement additional control measures, which may require submitting a revised general plan to the EPNR.

(d) *Dust control records.* The owner and/or operator must keep records detailing the dust control measures selected for each category. The owner and/or operator must make available the records to the environmental protection and natural resources division within three business days of the notice to the owner and/or operator.

(e) *Fee.* No fee is associated with the agriculture fugitive dust general plan.

(f) *Violations.* Failure to comply with the provisions of this section including the chosen control measures, or failure to obtain and implement an approved fugitive dust general plan is deemed to be a violation of this article.
(Code 2012, § 18-97; Ord. No. SRO-368-2010, § 18-87, 8-18-2010; Ord. No. SRO-402-2012, § 18-97, 5-30-2012)

Sec. 18-164. Administration for compliance and enforcement.

(a) *Issurance of notice of violation.* When EPNR determines that a violation of any of the applicable provisions of this article has been committed, an administrative compliance process shall be initiated by the issuance of a notice of violation (NOV) sent certified mail to the owner or operator within 30 days of the violation. Depending on the nature and seriousness of the violation, the EPNR

manager, at his or her discretion, shall determine whether or not the violation constitutes a fine. During the administrative compliance process, the EPNR manager shall have the authority to determine the fine assessment on applicable violations. The EPNR will consult with the office of the general counsel (OGC) and/or office of prosecutor in carrying out enforcement measures. Administrative fines and penalties for violation of this article shall not exceed $500.00 for each such violation and for each day of its continuance which may constitute a separate violation.

(b) *Contents.* EPNR's NOV will at minimum state the sections of this article the owner or operator violated, corrective action to remedy the violation, and specify a time period for corrective action.

(c) *Appeal process.* The owner or operator receiving the NOV may appeal the determination of the EPNR in writing to the Community manager within five business days from the date the NOV is received. A meeting on the appeal before the Community manager shall take place within 30 days from the date the appeal is received by the Community manager. The decision of the Community manager shall be final.

(d) *Judicial proceedings.* If the owner or operator fails to pay the administrative fine or fails to comply with this article, the EPNR shall initiate judicial proceedings by referring the violation to the Community's office of the general counsel who may file civil proceedings in the Community's tribal court in accordance with the applicable laws of the Community.

(Code 2012, § 18-98; Ord. No. SRO-368-2010, § 18-88, 8-18-2010; Ord. No. SRO-402-2012, § 18-98, 5-30-2012)

Sec. 18-165. Judicial proceedings; Community court.

The Community court shall have jurisdiction to hear all actions brought by the office of the general counsel or the office of prosecutor pursuant to section 18-164(d) or other applicable law, and may impose:

(1) Civil fines and penalties for violation of this article shall not exceed $1,000.00 for each such violation and for each day of its continuance which may constitute a separate offense.

(2) Other relief as may be available by law, which may include injunctive relief, and the posting of bonds or sureties to ensure compliance.

(Code 2012, § 18-99; Ord. No. SRO-368-2010, § 18-89, 8-18-2010; Ord. No. SRO-402-2012, § 18-99, 5-30-2012)

Sec. 18-166. Remedies not exclusive.

The remedies listed in this article are not exclusive of any other remedies available under any applicable federal, tribal or local laws and is within the discretion of the Community to seek cumulative remedies.

(Code 2012, § 18-100; Ord. No. SRO-368-2010, § 18-90, 8-18-2010; Ord. No. SRO-402-2012, § 18-100, 5-30-2012)